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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	:
1141 REALTY OWNER LLC, <u>et al.</u> ,	: Case No. 18-12341 (SMB)
	:
Debtors.	: Joint Administration Pending
	:
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS:
AUTHORIZING OPERATOR TO SATISFY PRE-PETITION
EMPLOYEE COMPENSATION OBLIGATIONS**

1141 Realty Owner LLC (“Owner”) and Flatironhotel Operations LLC (“Operator”, and together with Owner, the “Debtors”)¹, the debtors and debtors-in-possession in the above captioned cases (the “Chapter 11 Cases”), hereby move (the “Motion”) for entry of Interim and Final Orders: (i) authorizing Operator (A) to satisfy and, to the extent applicable, directing Operator’s payroll bank, JP Morgan Chase Bank N.A. (“Chase”), to honor the Pre-Petition Payroll and Pre-Petition Payroll Taxes (each as hereinafter defined, and collectively, the “Pre-Petition Employee Compensation Obligations”). In support of this Motion, the Debtors rely on the First Day Declaration (defined below) submitted contemporaneously herewith, and in addition respectfully states as follows:

¹ The Debtors herein and the last four digits of their respective tax identification number are: 1141 Realty Owner LLC (1804) and Flatironhotel Operations LLC (4773). The Debtors’ principal place of business is 9 West 26th Street a/k/a 1141 Broadway, New York, New York.

JURISDICTION, VENUE AND STATUTORY PREDICATE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and of this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105(a), 363, 364(b), 507(a)(5) and 541(d) of title 11 of the United States Code, 11 U.S.C. §§ 101, et. seq. (the “Bankruptcy Code”).

BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their respective businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. The Court and interested parties are respectfully referred to the Declaration of James Katchadurian Pursuant to Local Bankruptcy Rules 1007-2 and 9007-1 (the “First Day Declaration”)² for a detailed description of the Debtors’ businesses and events leading to the commencement of the Chapter 11 Cases.

6. The United States Trustee has not appointed an official creditors’ committee in the Chapter 11 Cases. No trustee or examiner has been appointed in the Chapter 11 Cases.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the First Day Declaration.

A. Operator's Workforce

7. As is set forth in the First Day Declaration, Operator has approximately fifteen (15) employees, consisting of thirteen (13) part-time hourly employees, one (1) independent contractor who is paid on a fixed fee basis and one (1) full-time salaried employee (collectively, the "Employees"). A redacted list of the Employees and estimated payments to the same is attached to this motion as **Exhibit A**.

8. Owner does not have any employees or operations but owns the property in which Operator operates.

9. The Employees perform a variety of crucial functions for Operator including, but not limited to, welcoming customers, answering customer questions, booking reservations, processing customers' bills, and maintenance of the hotel rooms and property. The Employees' valuable skill sets, indispensable institutional knowledge and industry expertise and overall understanding of the Debtors' operations make the Employees critical to the success of these Bankruptcy Cases.

B. Operator's Employee Compensation Obligations

10. In the ordinary course of business, the Employees are paid weekly, on every Friday. Operator's gross weekly payroll is approximately \$13,000.00.

11. Operator's last payroll was on July 27, 2018, for the period from July 15, 2018 through July 21, 2018. Prior to the Petition Date, Operator did not pay its Employees on account of wages earned during the period of July 22, 2018 through July 28, 2018. As a result, Operator believes that the total amount of gross unpaid wages, inclusive of payroll taxes for the period of July 22, 2018 through July 28, 2018 is approximately \$12,905.62. (the "Pre-Petition Payroll"). Consequently, Operator is hereby seeking authority to pay its Employees the Pre-

Petition Payroll. None of the amounts to be paid to each employee for the Pre-Petition Payroll period, however, will exceed the \$12,850.00 priority cap in section 507(a)(4) of the Bankruptcy Code.

C. Gross Payroll Deductions, Taxes and Governmental Withholdings

12. Upon the culmination of each payroll cycle, certain amounts are deducted from each of the Employees' paychecks to account for federal, state and local tax withholdings laws.

13. Operator is required by law to withhold from the Employees' wages amounts related to federal and state taxes, social security and Medicare taxes (collectively, the "Trust Fund Taxes"), and to remit the Trust Fund Taxes to the appropriate taxing authorities (collectively, the "Taxing Authorities"). Additionally, Operator is obligated to match from its own funds the social security and Medicare taxes and to remit to the Taxing Authorities, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (collectively, the "Employer Payroll Taxes" and, together with the Trust Fund Taxes, the "Payroll Taxes"). The Payroll Taxes for the last payroll period totaled approximately \$3,899.49. Operator believes it is current on its pre-petition Payroll Taxes obligation but for the amounts due for the period from July 22 through July 28, 2018 (the "Pre-Petition Payroll Taxes"), and therefore seek authority to pay Pre-Petition Payroll Taxes that have accrued before the Petition Date.

RELIEF REQUESTED AND BASIS THEREOF

14. The Pre-Petition Payroll and Pre-Petition Payroll Taxes constitute pre-petition obligations of Operator, to the extent they remain as of the Petition Date. The Debtors seeks an Order authorizing payment by Operator of, and directing Operator's banks to honor payments for, the Pre-Petition Payroll and the Pre-Petition Payroll Taxes (*i.e.*, collectively, as defined

above, the Pre-Petition Employee Compensation Obligations), to the extent they remain as of the Petition Date.

15. The Debtors submit the relief sought herein is authorized pursuant to section 363(b)(1) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,” and further justified by the Court’s broad equitable powers under section 105 of the Bankruptcy Code.

16. Section 105(a) of the Bankruptcy Code empowers the bankruptcy court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of . . .” the Bankruptcy Code. As one court observed:

The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. It was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W. R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989). Accord In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (quoting In re Penn Central Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (the “necessity of payment” doctrine permits immediate payment of claims to creditors who will not supply services or material essential to the debtors’ business until their pre-petition claims are paid)).

17. Application of the “necessity of payment” doctrine here establishes Operator should be authorized to honor its Pre-Petition Employee Compensation Obligations. See Mich.

Bureau of Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279-285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits). This doctrine is consistent with the paramount goal of chapter 11 of "facilitating the continued operation and rehabilitation of the debtor." Ionosphere Clubs, 98 B.R. at 176.

18. If Operator is not authorized to pay its outstanding pre-petition obligations to the Employees, its relationship with the Employees will be adversely affected and the Employees' morale, dedication, confidence, and cooperation might be compromised irreparably. The Employees' support for the Debtors' efforts during these cases is critical and cannot be jeopardized, particularly in light of the Debtors' contemplated going concern sale. Allowing Operator to satisfy the Pre-Petition Employee Compensation Obligations in the ordinary course will instill confidence in the Employees that Operator is in a position to satisfy, and intend to satisfy, its post-petition payroll and related obligations and will ensure the Debtors have a sufficient support system in which to operate and that the Debtors can successfully execute their strategy in Chapter 11 to sell substantially all of their assets as a going concern.

19. The amount to be paid to any Employee for the pre-petition period will not exceed the \$12,850.00 cap contained in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. In addition, payment of Operator's pre-petition payroll obligations will not prejudice other creditors of Operator's estate as the Employees are entitled to priority status under Section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to such obligations and payment in full pursuant to a Chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B).

20. With respect to the Payroll Taxes, the payment of such taxes also will not prejudice Operator's other creditors as the relevant Taxing Authorities generally would hold

priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to such obligations and are entitled to payment in full pursuant to a Chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(C). Moreover, the portion of the Payroll Taxes withheld from the Employees' wages on behalf of the applicable Taxing Authority (as well as the other deductions) are held in trust by Operator. As such, that portion of the Payroll Taxes (as well as the other deductions) is not property of Operator's estate under Section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990).

21. In other chapter 11 cases, courts in this District have approved payment of prepetition claims for compensation similar to those described herein.³ See, e.g., In re Chassix Holdings, Inc., Case No. 15-10578 (MEW) (Bankr. S.D.N.Y. April 10, 2015); In re The Great Atlantic & Pacific Tea Company, Inc., Case No. 1024549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011); In re Uno Restaurant Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010); In re Finlay Enterprises, Inc., Case No. 0914873 (JMP) (Bankr. S.D.N.Y. Sept. 3, 2009); In re General Motors Corp., Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 1, 2009); In re U.S. Shipping Partners L.P., Case No. 09-12711 (RDD) (Bankr. S.D.N.Y. Apr. 30, 2009); In re General Growth Properties, Inc., Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 11, 2009); In re Bearing Point, Inc., Case No. 09-10691 (REG) (Bankr. S.D.N.Y. March 13, 2009); In re Tronox Inc., Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009); In re Lyondell Chemical Co., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 26, 2009); In re Lenox Sales, Inc., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Nov. 25, 2008); In re Steve & Barry's

³ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon email request of the Debtors' counsel by contacting Tracy Klestadt at TKlestadt@klestadt.com.

Manhattan LLC, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 10, 2008); In re Lexington Precision, Case No. 08-11153 (MG) (Bankr. S.D.N.Y. April 2, 2008); In re PRC, LLC, Case No. 08-10239 (MG) (Bankr. S.D.N.Y. Jan. 24, 2008); In re Silicon Graphics, Inc., Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. May 10, 2006).

NOTICE

22. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion will be given to (a) United States Trustee; (b) known holders of secured claims; and (c) the holders of the 25 largest unsecured claims. The Debtors submit that no other notice need be given.

NO PRIOR APPLICATION

23. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

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WHEREFORE, for all the foregoing reasons, the Debtors respectfully request entry of an Order, substantially in the form annexed hereto as **Exhibit B**, granting the Motion and such other further relief as the Court deems just and equitable.

Dated: New York, New York
July 31, 2018

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*Proposed Attorneys for the Debtors and
Debtors-in-Possession*

EXHIBIT A

Pre-Petition Payroll Period, 07/22/18-07/28/18 (estimated)

Name	Dept	Status/ Pay	Total Pay
Employee 1	General manager (salaried employee)	Salary	\$ 1,634.62
Employee 2	General manager (independent contractor)	Fixed Fee	\$ 2,600.00
Employee 3	Accounting	Part time, Hourly	\$ 782.00
Employee 4	Front desk	Part time, Hourly	\$ 645.00
Employee 5	Front desk	Part time, Hourly	\$ 832.50
Employee 6	Front desk	Part time, Hourly	\$ 855.00
Employee 7	Front desk	Part time, Hourly	\$ 480.00
Employee 8	Front desk	Part time, Hourly	\$ 731.00
Employee 9	IT services	Part time, Hourly	\$ 975.00
Employee 10	Housemen	Part time, Hourly	\$ 510.00
Employee 11	Housemen	Part time, Hourly	\$ 645.00
Employee 12	Housemen	Part time, Hourly	\$ 600.00
Employee 13	Housemen	Part time, Hourly	\$ 667.50
Employee 14	Maintenance operation	Part time, Hourly	\$ 840.00
Employee 15	Maintenance operation	Part time, Hourly	\$ 108.00
		TOTALS:	\$ 12,905.62

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
:
1141 REALTY OWNER LLC, et al., : Case No. 18-12341 (SMB)
:
Debtors. : Jointly Administered
:
----- X

**INTERIM ORDER: AUTHORIZING OPERATOR TO SATISFY PRE-PETITION
EMPLOYEE COMPENSATION OBLIGATIONS**

Upon the motion (the “Motion”) of 1141 Realty Owner LLC (“Owner”) and Flatironhotel Operations LLC (“Operator”, and together with Owner, the “Debtors”), the debtors and debtors-in-possession in the above-referenced chapter 11 cases (the “Bankruptcy Cases”), for entry of an order authorizing Operator to satisfy and, to the extent applicable, directing any payroll banks to honor, Pre-Petition Employee Compensation Obligations¹; and this Court having jurisdiction to consider the Motion and the relief requested therein; and consideration of the Motion and the relief required being a core proceeding; and venue being proper before this Court; and due and sufficient notice of the Motion having been given under the particular circumstances to the Notice Parties; and it appearing that no other or further notice need be provided; and this Court having determined that relief requested in the Motion being in the best interest of the Debtors, their creditors, and all parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

¹ All capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis, pending consideration of the entry of a final Order.

2. Operator hereby is authorized and empowered to satisfy in the ordinary course of business the Pre-Petition Employee Compensation Obligations including, but not limited to, Pre-Petition Payroll and Pre-Petition Payroll Taxes, subject to the limitations set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

6. Nothing in this Order, nor any action taken by Operator in furtherance of the implementation hereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

7. Any and all financial institutions honoring the aforementioned obligations to Operator's Employees are authorized and directed to receive, process, honor and pay all checks, drafts, and automatic clearing house and wire transfers drawn on bank accounts of the Debtors to the extent authorized herein or directed by the Debtors, whether presented, drawn or issued before or after the commencement of the bankruptcy case for payment by the holder thereof, provided that sufficient funds, whether deposited prior to, or subsequent to, the commencement of this bankruptcy case, are in, or otherwise are available pursuant to the Debtors' cash management system to fund the relevant bank accounts to cover and permit payment thereof.

8. The Debtors are hereby authorized (consistent with this Order) to issue post-petition checks (or electronic fund transfers) in payment of pre-petition obligations to Operator's Employees, including, but not limited to, wage garnishments, child support payments and alimony covered by a check that is dishonored or rejected as a consequence of the commencement of the Bankruptcy Cases.

9. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors arising in connection with the Pre-Petition Employee Compensation Obligations or as an admission as to the validity or priority of any claim against the Debtors.

10. Nothing in this order should be construed as approving any transfer to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any request that could fall within section 503(c). This interim Order does not implicitly or explicitly approve any bonus plan, incentive plan, severance plan or other plan covered by section 503(c) of the Bankruptcy Code.

11. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

13. The Final Hearing on the Motion shall be held on _____, 2018 at _____ (Eastern Time) and any objections or responses to the Motion shall be in writing, filed with the Court, with a copy to chambers, so as to be received by the Debtors' counsel, and the Office of the United States Trustee no later than seven (7) days before the date of the Final Hearing.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
_____, 2018

UNITED STATES BANKRUPTCY JUDGE